

**IN THE SUPREME COURT OF MISSOURI**

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**Appeal No. SC90139**

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**JASON L. RICE,**

**Plaintiff/Respondent**

**vs.**

**SHELTER MUTUAL INSURANCE COMPANY,**

**Defendant/Appellant**

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Appeal from the Circuit Court of Johnson County, Missouri

Case No: 06JO-CV00607

Hon. Joseph P. Dandurand, Judge

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**SUBSTITUTE BRIEF OF RESPONDENT**

**JASON L. RICE**

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## POINTS RELIED ON WITH AUTHORITIES

- I. The trial court did *not* err in entering summary judgment in favor of respondent, Jason L. Rice, because the exclusion at issue is ambiguous in that the exclusion conflicts with the additional provision that provides: “All provisions of this Part of the policy which exceed the requirements of any applicable uninsured motorist insurance law or financial responsibility law, or are not governed by it, are fully enforceable” and in that this conflict creates an ambiguity that must be construed and resolved in favor of the insured.

*Krombach v. Mayflower Ins. Co., Ltd.*, 785 S.W.2d 728 (Mo. App. E.D. 1990)

*Cano v. Travelers Ins. Co.*, 656 S.W.2d 266 (Mo. banc 1983)

*Behr v. Blue Cross Hosp. Serv., Inc., of Missouri*, 715 S.W.2d 251 (Mo. banc 1986)

*Farm Bureau Town & Country Ins. of Missouri v. Hilderbrand*, 926 S.W.2d 944 (Mo. App. W.D. 1996)

Revised Statutes of Missouri § 379.203 (as amended 1991)

**II. The trial court did *not* err in entering summary judgment in favor of respondent, Jason L. Rice, because Shelter failed to appeal the trial court’s determination that the exclusion at issue is excessively broad and rendered the uninsured motorist coverage illusory in that Shelter failed to include this issue in its Point Relied On and failed to adequately support its contention in its Argument, in violation of Missouri Supreme Court Rule 84.04; and because, even if Shelter did preserve the issue, the exclusion at issue is excessively broad and rendered the uninsured motorist coverage illusory in that Shelter’s excessively broad definition of a “compensation law” eliminates uninsured motorist coverage in nearly all circumstances and the exclusion at issue requires a complete forfeiture of uninsured motorist benefits rather than a set-off of such benefits if a single penny is payable under a “compensation law.”**

*Cano v. Travelers Ins. Co.*, 656 S.W.2d 266 (Mo. banc 1983)

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*Krombach v. Mayflower Ins. Co., Ltd.*, 785 S.W.2d 728 (Mo. App. E.D. 1990)

*Thummel v. King*, 570 S.W.2d 679 (Mo. banc 1978)

Revised Statutes of Missouri § 379.203 (as amended 1991)

Missouri Supreme Court Rule 84.04 (as amended 2008)

**III. Respondent Rice’s Response to Appellant Shelter’s Point I: The trial court did *not* err in entering summary judgment in favor of respondent, Jason L. Rice, because the exclusion at issue violated the public policy of the State of Missouri established by § 379.203, RSMo, in that the purpose of § 379.203, RSMo, is to establish a level of uninsured motorist protection for Jason L. Rice equivalent to the liability coverage Jason L. Rice would have received had the uninsured vehicle been insured by a \$600,000 liability insurance policy and in that Shelter’s construction of its exclusion rewrites § 379.203, RSMo, to require uninsured motorist coverage “in the amount of \$25,000 per person.”**

*Kuda v. Am. Family Mut. Ins. Co.*, 790 S.W.2d 464 (Mo. banc 1990)

*Dawson v. Denney-Parker*, 967 S.W.2d 90 (Mo. App. E.D. 1998)

*Cano v. Travelers Ins. Co.*, 656 S.W.2d 266 (Mo. banc 1983)

*Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538 (Mo. banc 1976)

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30 Missouri Practice Series, Insurance Law & Practice § 9.21

## **JURISDICTIONAL STATEMENT**

This appeal arises out of a personal injury action initiated by Daniel Patterson against Judy Saimon in the Circuit Court of Johnson County, wherein Jason L. Rice was a Third-Party Plaintiff and Shelter Mutual Insurance Company was a Third-Party Defendant. [LF, p. 8-11] On January 17, 2008, the Honorable Joseph P. Dandurand granted Summary Judgment in favor of Jason L. Rice. [LF, p. 189-193; Ex. D, p. A17-A21]

This appeal followed when, on February 27, 2008, Shelter Mutual Insurance Company filed its Notice of Appeal to the Western District of the Missouri Court of Appeals. [LF, p. 194] On March 10, 2009, the Missouri Court of Appeals reversed and remanded the trial court's judgment.

Following this decision, Jason L. Rice filed a Motion for Rehearing and Application for Transfer on March 24, 2009. The Court of Appeals denied these requests for post-opinion review on April 28, 2009. Thereafter, Jason L. Rice filed an Application for Transfer to the Supreme Court of Missouri on May 7, 2009. On May 26, 2009, this Court sustained his Application; therefore, the Court has jurisdiction over this matter under Article V, Section 10 of the Missouri Constitution and Rule 83.02 of the Missouri Rules of Civil Procedure.

## STATEMENT OF FACTS

Rice provides a separate statement of facts to set forth those facts that are material to the questions presented by this appeal.

### A. Introduction

Appellant Shelter sold three insurance policies that declared a combined total of uninsured motorist coverage applicable to respondent Rice in the amount of \$600,000. [LF, p. 61, ¶ 1; Ex. C, p. A13] Shelter acknowledges Rice sustained damages of at least \$600,000 because of injuries in a motor vehicle collision caused by an uninsured motorist. [LF, p. 63-64, ¶ 8; p. 167; Ex. C, p. A15-A16] Shelter paid Rice the mandatory minimum uninsured motorist coverage of \$75,000 required by § 379.203, RSMo, but Shelter refused to pay Rice the additional \$525,000 of purchased coverage because unspecified workers' compensation benefits were payable (and paid) to Rice. [LF, p. 63, ¶ 7; Ex. C, p. A15, ¶ 7]

The Insuring Agreement for the uninsured motorist coverage, Coverage E, provides that, subject to the limit of liability in the declarations of coverage, Shelter:

will pay damages for **bodily injury** sustained by an **Insured** which that **Insured**, or that **insured's** legal representative, is legally entitled to recover from the **owner or operator** of an **uninsured motor vehicle**.

[LF p. 40, ¶ entitled "Insuring Agreement for Coverage E;" LF, p. 84, ¶ entitled "Insuring Agreement for Coverage E;" Ex. B, p. A5, ¶ entitled "Insuring Agreement for Coverage E"]

All three insurance policies also contain a provision declaring that:

Coverage E does not apply:

- (3) To damages sustained by any **Insured** if benefits are:
  - (a) payable to, or on behalf of, such **Insured** under any **compensation law**, as a result of the same **accident**, or
  - (b) required by any **compensation law** to be provided to, or on behalf of, such **insured** as a result of the same **accident**.

This exclusion does not apply to the amounts of coverage mandated by any uninsured motorist insurance law or **financial responsibility law** applicable to the **accident**, but does apply to any amounts exceeding that mandate, and to coverages which are not mandated by such laws.

[LF p. 40 – 41, ¶ entitled “Coverage E does not apply;” LF, p. 84-85, ¶ entitled “Coverage E does not apply;” Ex. B, p. A5-A6, ¶ entitled “Coverage E does not apply:”]

The policy defines “compensation law” as follows:

- (6) **Compensation law** means any law under which benefits are paid to a **person** as compensation for the effects of **bodily injury**, without regard to fault, because of that **person’s** status as an employee or beneficiary. It includes, but is not limited to, workers’ compensation laws, disability laws, the Federal Employers’ Liability Act and the Jones Act. [LF, p. 24, ¶ (6); LF, p. 68, ¶ (6); Ex. A, p. A1, ¶ (6)]

**B. Shelter’s Statement of Facts omitted the last sentence in the paragraph of Shelter’s insurance policies that describes the effect of uninsured motorist and financial responsibility laws. The omitted sentence declares that “[a]ll provisions of this Part of the policy which exceed the requirements of any applicable uninsured motorist insurance law or financial responsibility law . . . are fully enforceable.”**

There is a sentence in all three of Shelter’s policies declaring that “[a]ll provisions of this Part of the policy which exceed the requirements of any applicable **uninsured motorist insurance law** or **financial responsibility law** . . . are fully enforceable.” [LF, p. 41; LF, p. 85; Ex. B, p. A6] This sentence was inadvertently omitted from Shelter’s Statement of Facts [Appellant’s Brief, p. 3] and from the Stipulated Statement of Uncontroverted Facts that was presented to the trial court. [LF, p. 62, ¶ “Exclusions;” Ex. C, p. A14, ¶ “Exclusions” ] With the omitted sentence included, the full paragraph titled “Effect of Uninsured Motorist Insurance Laws or Financial Responsibility Laws” provides as follows:

**EFFECT OF UNINSURED MOTORIST INSURANCE LAWS OR  
FINANCIAL RESPONSIBILITY LAWS**

If an applicable **uninsured motorist insurance law** or **financial responsibility law** renders any provision of this Part of the policy unenforceable, **we** will provide only the minimum limits mandated by such law. However, if other insurance covers an **insured’s claim** and provides

those required minimum limits, the provisions of this policy are fully enforceable.

*All provisions of this Part of the policy which exceed the requirements of any applicable **uninsured motorist insurance law or financial responsibility law, or are not governed by it, are fully enforceable.***

[LF, p. 41; LF, p. 85; Ex. B, p. A6; omitted sentence emphasized with italics, bold emphasis in original text] The quotation in the trial court’s Final Judgment from this same paragraph of Shelter’s policies also omits the last sentence of the paragraph entitled “Effect of Uninsured Motorist Insurance Laws or Financial Responsibility Laws.” [LF, p. 192; Ex. D, p. A20]

**C. The Trial Court entered summary judgment for Rice, concluding that the exclusionary language of the Shelter policies is illusory, excessively broad and contrary to the public policy of Missouri.**

The trial court’s opinion did not address the issue of ambiguity resulting from the omitted sentence in the section of Shelter’s policy entitled “Effect of Uninsured Motorist Insurance Laws or Financial Responsibility Laws,” and the trial court entered summary judgment for Rice only because the trial court concluded:

The exclusionary language provides that if the insured receives benefits for bodily injury from any insurance source, including workers’ compensation benefits, FELA benefits, Medicare, Medicaid, Social Security, VA benefits, or even health insurance benefits, the insured is not

entitled to uninsured benefits under Coverage E. If all the overlapping exclusionary language contained in the policies is given meaning, then the insured received no perceivable value for the premiums paid for uninsured motorist coverage; and the appearance and reasonable expectation of having purchased Six Hundred Thousand Dollars of uninsured motorist coverage would be illusory. In *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266 (Mo. banc 1983), the Missouri Supreme Court not only held that language in an uninsured motorist policy that purported to reduce the insurer's liability because of the receipt of workers' compensation benefits violated public policy, and the provisions of Mo.Rev.Stat. § 579.203 [sic], but also that "[a] construction which may render a portion of the policy illusory should not be indulged in." *Cano* at 271. The exclusionary language of Coverage E in the Shelter policies is so excessively broad as to be void and contrary to the public policy of Missouri. [LF, p. 192, last paragraph; Ex. D, p. A20, last paragraph]

## ARGUMENT

**I. The trial court did *not* err in entering summary judgment in favor of respondent, Jason L. Rice, because the exclusion at issue is ambiguous in that the exclusion conflicts with the additional provision that provides: “All provisions of this Part of the policy which exceed the requirements of any applicable uninsured motorist insurance law or financial responsibility law, or are not governed by it, are fully enforceable” and in that this conflict creates an ambiguity that must be construed and resolved in favor of the insured.**

**A. The standard of review applicable is that the trial court’s judgment should be affirmed if it was the correct judgment.**

“Review of summary judgment is equivalent to review of a court-tried or equity proceeding, and if, as a matter of law, the judgment is sustainable on any theory, the judgment of the trial court must be sustained.” *Roberts Fertilizer, Inc. v. Steinmeier*, 748 S.W.2d 883, 886 (Mo. App. W.D. 1988).

**B. The uninsured motorist coverage provision that declared “[a]ll provisions of this Part of the policy which exceed the requirements of any applicable uninsured motorist insurance law or financial responsibility law, or are not governed by it, are fully enforceable” conflicts with the provision that purports to exclude uninsured motorist coverage in amounts that exceed the requirements of**

**§ 379.203, RSMo, and the resulting ambiguity should be construed  
and resolved in favor of the insured, respondent Jason L. Rice.**

Shelter's single Point Relied On complained of only one of several rationales for the trial court's order of summary judgment: the effect of § 379.203, RSMo, on Shelter's exclusion used to deny Rice the uninsured motorist coverage he had purchased.

Respondent addresses Shelter's argument on this issue in Point 3, *infra*. Without conceding any point, and though § 379.203, RSMo, certainly provides a sufficient basis by which to affirm the trial court's order of summary judgment, § 379.203, RSMo, is not necessarily dispositive and may be avoided completely if the Court so desires. In addition to violating § 379.203, RSMo, the exclusion at issue is ambiguous when construed in concert with additional uninsured motorist provisions. This ambiguous policy language must be construed strictly against Shelter. *Standard Artificial Limb, Inc. v. Allianz Ins. Co.*, 895 S.W.2d 205, 209 (Mo. App. E.D. 1995).

The exclusionary language relied upon by appellant, Shelter, provides that the uninsured motorist coverage does not apply “[t]o damages sustained by any **insured** if benefits are: (a) payable to, or on behalf of, such **Insured** under any **compensation law**, as a result of the same **accident**.” [LF, p. 41, ¶ (3); LF, p. 85, ¶ (3); Ex. B, p. A6, ¶ (3)] Appellant drafted its uninsured motorist coverage so that its broadly defined compensation law “exclusion does not apply to the amounts of coverage mandated by any uninsured motorist insurance law or **financial responsibility law** applicable to the **accident**, but does apply to any amounts exceeding that mandate, and to coverages which are not mandated by such laws.” [LF, p. 41, ¶ (3); LF, p. 85, ¶ (3); Ex. B, p. A6, ¶

(3)] The following additional provision in Shelter’s insurance policies immediately follows the exclusionary provisions relied upon by Shelter:

**EFFECT OF UNINSURED MOTORIST INSURANCE LAWS OR  
FINANCIAL RESPONSIBILITY LAWS**

If an applicable **uninsured motorist insurance law** or **financial responsibility law** renders any provision of this Part of the policy unenforceable, **we** will provide only the minimum limits mandated by such law. However, if other insurance covers an **insured’s claim** and provides those required minimum limits, the provisions of this policy are fully enforceable.

*All provisions of this Part of the policy which exceed the requirements of any applicable **uninsured motorist insurance law** or **financial responsibility law**, or are not governed by it, are fully enforceable.*

[LF, p. 41; LF, p. 85; Ex. B, p. A6, **bold** emphasis in policy, italics emphasis added]

What does this last sentence in the section concerning the effect of uninsured motorist insurance laws or financial responsibility laws mean? Does it mean the provisions that initially afforded respondent, Jason L. Rice, \$600,000 (per person) uninsured motorist coverage (which obviously exceeds the \$25,000 per person mandate of § 303.030 RSMo) are “fully enforceable?” If not, what does it mean? If the provisions of the uninsured motorist coverage that exceed the requirements of § 379.203, RSMo, are “fully enforceable” then the exclusionary provisions relied on by Shelter are not enforceable.

“An ambiguity exists when there is duplicity, indistinctness or uncertainty in the meaning of the words used in the contract.” *Peters v. Employers Mut. Cas. Co.*, 853 S.W.2d 300, 302 (Mo. banc 1993). Shelter’s insurance policies provide that, notwithstanding whatever meaning may be assigned to the previous provisions in its insurance policies, “[a]ll provisions of this Part of the policy which exceed the requirements of any applicable **uninsured motorist insurance law** or **financial responsibility law**, or are not governed by it, *are fully enforceable*.” [LF, p. 41; LF, p. 85; Ex. B, p. A6, emphasis added] If an insurance “contract promises something at one point and takes it away at another there is an ambiguity.” *Behr v. Blue Cross Hosp. Serv., Inc., of Missouri*, 715 S.W.2d 251, 256 (Mo. banc 1986). “Exceptions and limitations contained in insurance policies should be construed strictly against the insurer.” *Standard Artificial Limb, Inc. v. Allianz Ins. Co.*, 895 S.W.2d 205, 209 (Mo. App. E.D. 1995). “When an insurance company seeks to escape coverage based on policy exclusions, the burden is on it to establish the applicability of the exclusions.” *Superior Equip. Co., Inc. v. Maryland Cas. Co.*, 986 S.W.2d 477, 482 (Mo. App. E.D. 1998).

Where exclusionary language is excessively broad, there may be only illusory coverage, and the insurer should be estopped to deny coverage. In *Krombach v. Mayflower Ins. Co., Ltd.*, 785 S.W.2d 728 (Mo. App. E.D. 1990), the court’s finding of ambiguity was based, in part, on the fact that without its finding of ambiguity there would have been only illusory coverage: “This construction in favor of an ambiguity in the policy results because to do otherwise would render the sentence meaningless and

provide illusory coverage.” *Id.* at 734. In *Krombach*, the court held that a policy of uninsured and underinsured motorist protection was ambiguous, resulting in additional uninsured motorist coverage. The court in *Krombach* observed that construction of an insurance policy that would result in a portion of the policy being illusory was prohibited by the Missouri Supreme Court in *Cano*:

We cannot indulge in a construction that would render a portion of the policy illusory. *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266, 271 [5, 6] (Mo. banc 1983). Therefore, the sentence at issue leaves unclear what underinsured motorist coverage is provided by the Mayflower policy.

*Krombach*, 785 S.W.2d at 735.

When attempting to determine whether an ambiguity exists in exclusionary language of an insurance policy, the reasonable expectations of the parties are appropriate to consider, and a contract that promises coverage at one point in the policy and then purports to take it away at another point in the policy is ambiguous. The court applied all of these principles when finding ambiguity in a farm liability policy of insurance in *Farm Bureau Town & Country Ins. of Missouri v. Hilderbrand*, 926 S.W.2d 944, 947 (Mo. App. W.D. 1996).

An ambiguity arises where there is duplicity, indistinctness or uncertainty in the meaning of the words used in the contract. *Rodriguez v. General Accident Ins. Co. of Am.*, 808 S.W.2d 379, 381 (Mo. banc 1991). *A contract is ambiguous if it promises something in one point and takes it away in another.* *Maxon v.*

*Farmers Ins. Co., Inc.*, 791 S.W.2d 437, 438 (Mo. App. W.D. 1990). Any ambiguity is construed against the insurance company. *Id.*

*Farm Bureau Town & Country Ins. of Missouri*, 926 S.W.2d at 947 (emphasis added).

This Court very recently addressed an ambiguous underinsured motorist provision in *Jones v. Mid-Century Ins. Co.*, No. SC 89844, (Mo. banc June 30, 2009)(2009 WL 1872113). *Jones* involved the Court’s interpretation of a purported “set-off” from underinsured motorist coverage of the amount paid to the claimant by the tortfeasor. [Opinion at 1] This Court confirmed that “Missouri law is well-settled that where one provision of a policy appears to grant coverage and another to take it away, an ambiguity exists that will be resolved in favor of coverage.” [Opinion at 1]

In *Jones*, this Court first examined what coverage was granted and then taken away:

- (1) The insurer first granted the lesser of the \$100,000 policy limit or the difference between the claimant’s damages and the payments already made [Opinion at 2];
- (2) A second provision agreed to pay “up to the policy limits” of \$100,000, *Id.*; and
- (3) A third provision then sought to reduce the coverage by the amount already paid to the claimant. *Id.*

This Court found that the attempted “set-off” was “at best, in conflict with the clear intent of the [provisions granting coverage] and . . . , at worst, misleading.” *Id.* at 3.

Thus, this Court held that the “set-off” provision attempted to take away coverage

already granted and, therefore, created an ambiguity that would be construed in favor of coverage. *Id.* at 4.

Applying the analysis described in *Jones*: What coverage did Shelter first give Rice and then take away? Tracking the coverage and exclusions, we find:

- (1) Rice was entitled to \$75,000 of uninsured motorist coverage (\$25,000 on each of three policies) by operation of law pursuant to § 379.203 RSMo;
- (2) Rice purchased an additional \$525,000 in uninsured motorist coverage and Shelter promised to provide this additional coverage in exchange for the additional premiums paid;
- (3) Shelter then took away the entire \$600,000 (by application of its purported exclusion) if Rice became entitled to receive (and even if he did not actually receive) additional benefits without regard to fault (including benefits such as workers' compensation, FELA benefits, Medicare, Medicaid, Social Security, VA benefits, health insurance, life insurance, etc.);
- (4) Shelter then gave back the original \$75,000 in uninsured motorist coverage originally given in Part (1) that is required under operation of law, but maintained the exclusion of the additional \$525,000 purchased by Rice; and
- (5) Finally, Shelter gave back the entire \$600,000 in uninsured motorist coverage by declaring that “[a]ll provisions . . . are fully enforceable.”

[LF, p. 41; LF, p. 85; Ex. B, p. A6]

The standard of review of a trial court's judgment granting summary judgment requires that the judgment be affirmed if the judgment was correct under the facts and law. *Roberts Fertilizer, Inc. v. Steinmeier*, 748 S.W.2d 883, 886 (Mo. App. W.D. 1988.). The trial court's order of summary judgment was correct because Shelter first gave Rice the additional uninsured motorist coverage he purchased, then took that coverage away, then gave back a portion of the coverage, and finally gave back the entire coverage. [LF, p. 41; LF, p. 85; Ex. B, p. A6] Shelter's policy language, when read as a whole creates "duplicity, indistinctness [and] uncertainty in the meaning of the words used in the contract." *Peters v. Employers Mut. Cas. Co.*, 853 S.W.2d 300, 302 (Mo. banc 1992). Shelter's ambiguity must be strictly construed against it and in favor of coverage for Rice. *Standard Artificial Limb, Inc.*, 895 S.W.2d at 209. Therefore, the trial court's order of summary judgment was correct and should be affirmed.

**II. The trial court did *not* err in entering summary judgment in favor of respondent, Jason L. Rice, because Shelter failed to appeal the trial court’s determination that the exclusion at issue is excessively broad and rendered the uninsured motorist coverage illusory in that Shelter failed to include this issue in its Point Relied On and failed to adequately support its contention in its Argument, in violation of Missouri Supreme Court Rule 84.04; and because, even if Shelter did preserve the issue, the exclusion at issue is excessively broad and rendered the uninsured motorist coverage illusory in that Shelter’s excessively broad definition of a “compensation law” eliminates uninsured motorist coverage in nearly all circumstances and the exclusion at issue requires a complete forfeiture of uninsured motorist benefits rather than a set-off of such benefits if a single penny is payable under a “compensation law.”**

**A. The standard of review applicable to this appeal is that the trial court’s judgment should be affirmed if it was the correct judgment.**

“Review of summary judgment is equivalent to review of a court-tried or equity proceeding, and if, as a matter of law, the judgment is sustainable on any theory, the judgment of the trial court must be sustained.” *Roberts Fertilizer, Inc. v. Steinmeier*, 748 S.W.2d 883, 886 (Mo. App. W.D. 1988).

**B. Shelter did not present a point relied on addressing the basis for the trial court’s entry of summary judgment in favor of Rice, to-wit, that the exclusionary language in Shelter’s uninsured motorist coverage is excessively broad, and that it provides only illusory uninsured motorist coverage above the statutorily mandated minimum coverage.**

Supreme Court Rule 84.04 details certain requirements for every appellate brief, including precise requirements for a point relied on and the argument section of the brief. An appellant waives its claim of error if such claim is not included in appellant’s point relied on. *Thummel v. King*, 570 S.W.2d 679, 686 (Mo. banc 1978). *See also Billings Mut. Ins. Co. v. Cameron Mut. Ins. Co.*, 229 S.W.3d 138, 154 n.8 (Mo. App. S.D. 2007). As this Court noted in *Thummel*:

The requirement that the point relied on clearly state the contention on appeal is not simply a judicial word game or a matter of hypertechnicality on the part of appellate courts. It is rooted in sound policy. Perhaps the most important objective of the requirement relative to the points relied on is the threshold function of giving notice to the party opponent of the precise matters which must be contended with and answered. Absent that, it is difficult, at the very least, for respondent’s counsel to properly perform his briefing obligation.

...

In addition, such notice is essential to inform the court of the issues presented for resolution.

*Thummel*, 570 S.W.2d at 686. Shelter’s failure to provide a properly constructed point relied on creates a dilemma for this Court: “. . . the court is left with the dilemma of deciding [this] case (and possibly establishing precedent for future cases) on the basis of inadequate briefing and advocacy or undertaking additional research and briefing to supply the deficiency. Courts should not be asked or expected to assume such a role.”

*Id.*

Not only must a point relied on be properly drafted, but where “a party fails to support a contention with relevant authority or argument beyond conclusions, the point is considered abandoned.” *Braswell v. Missouri State Hwy. Patrol*, 249 S.W.3d 293, 299-300 (Mo. App. S.D. 2008) (internal quotation omitted). *See also Luft v. Schoenhoff*, 935 S.W.2d 685, 687 (Mo. App. E.D. 1996) (a point on appeal is considered abandoned where the party fails to support a contention with relevant authority or argument beyond conclusions).

It is necessary to provide the proper frame of reference in order to determine whether Shelter preserved this issue on appeal. This Court must compare the order and final judgment of the trial court with the assertion of error raised in Shelter’s single Point Relied On.

The trial court’s summary judgment order stated, in pertinent part:

The exclusionary language provides that if the insured receives benefits for bodily injury from any insurance source, including workers’ compensation benefits, FELA benefits, Medicare, Medicaid, Social Security, VA benefits, or even health insurance benefits, the insured is not entitled to uninsured benefits

under Coverage E. If all the overlapping exclusionary language contained in the policies is given meaning, then the insured received no perceivable value for the premiums paid for uninsured motorist coverage; and the appearance and reasonable expectation of having purchased Six Hundred Thousand Dollars of uninsured motorist coverage would be illusory. In *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266 (Mo. banc 1983), the Missouri Supreme Court not only held that language in an uninsured motorist policy that purported to reduce the insurer's liability because of the receipt of workers' compensation benefits violated public policy, and the provisions of Mo.Rev.Stat. § 379.203 [corrected], but also that "[a] construction which may render a portion of the policy *illusory* should not be indulged in." *Cano* at 271. The exclusionary language of Coverage E in the Shelter policies is so excessively broad as to be void and contrary to the public policy of Missouri.

[LF, p. 192; Ex. D, p. A20] (emphasis added).

The trial court based its judgment on the Shelter exclusion's "excessively broad" language and illusory effect; not wholly on the exclusion's violation of § 379.203, RSMo. However, Appellant failed to raise this issue at all in its single Point Relied On. Instead, Shelter chose to appeal only the exclusion's relation to the financial responsibility law.

It is true that appellate courts have discretion to review an appeal on the merits so long as the Court is able to discern the appellant's claims of error and such claims are supported by relevant authority or argument. See *Martens v. White*, 195 S.W.3d 548

(Mo. App. S.D. 2006). Thus, it is possible that Shelter, in its Reply Brief, may attempt to persuade this Court to consider argument concerning the exclusion's "excessively broad" language and illusory effect. However, this Court should not do so.

Even if Appellant's Point Relied On could be broadly interpreted to raise an issue concerning the trial court's ruling that the "exclusionary language of Coverage E in the Shelter policies is so excessively broad as to be void and contrary to the public policy of Missouri," [LF p. 192; Ex. D, p. A20]; Shelter failed to "support [this] contention with relevant authority or argument beyond conclusions" and the point must be considered abandoned. *Braswell*, 249 S.W.3d at 299-300.

Shelter attempted to address the issue in a single paragraph, unsupported by citation to authority of any kind, on page 15 of its 16-page brief. [Appellant's Brief, p. 15, ¶ 2] Shelter added this "argument" just before its conclusion and, quite literally, as an afterthought. Shelter failed to preserve this issue on appeal through either its Point Relied On or its legal argument and the Court should affirm the judgment of the trial court because the basis for the trial court's order has not been contested, and Shelter has not preserved the issue for appeal.

**C. The "excessively broad" Shelter exclusion is unconscionable and created only illusory UM coverage; and the trial court, therefore, did not err in finding that Shelter's exclusion was unenforceable.**

The trial court determined not only that the Shelter exclusion violated § 379.203, RSMo, and the public policy established by § 379.203, RSMo (the issue in appellant's sole point and argument, and respondent's Point III herein), but also that "[t]he

exclusionary language of Coverage E in the Shelter policies is so excessively broad as to be void and contrary to the public policy of Missouri.” [LF, p. 192, last sentence; Ex. D, p. A20] The trial court determined that the exclusion is so broad as to exclude all uninsured motorist coverage in amounts above the statutory minimum coverage, resulting in illusory coverage, which is inconsistent with the reasonable expectations principle of insurance law. [LF, p. 192, ¶ 2; Ex. D, p. A20, ¶ 2]

Each of the three Shelter policies at issue define “compensation law” as follows:

**Compensation law** means any law under which benefits are paid to a **person** as compensation for the effects of **bodily injury**, without regard to fault, because of that **person’s** status as an employee or beneficiary. It includes, but is not limited to, workers’ compensation laws, disability laws, the Federal Employers’ Liability Act and the Jones Act.

[LF, p. 24, ¶ (6); LF, p. 68, ¶ (6); Ex. A, p. A1, ¶ (6)]

Thus, if a Shelter insured is entitled to receive any benefit under any law (which includes private contract law), the insured fully forfeits the right to receive the purchased uninsured motorist coverage in amounts exceeding the statutory mandatory minimums! Uninsured motorist coverage benefits from other insurance policies are obviously paid pursuant to a “compensation law,” and, therefore, a basis for exclusion of uninsured motorist coverage above the statutory mandatory minimum coverage if the exclusionary language was enforceable.

Benefits from an accidental death life insurance policy are payable pursuant to the contract law of Missouri without regard to fault. Therefore, Shelter’s exclusionary

language also requires a complete forfeiture of uninsured motorist coverage above the statutorily mandated minimum coverage because of receipt by a wrongful death claimant of life insurance benefits, if the language is enforceable.

If a Shelter insured becomes the beneficiary of Social Security disability benefits, pursuant to a determination under 42 U.S.C. § 416(i)(1) or § 423(d)(1)(A), Shelter's exclusion renders inapplicable such of its uninsured motorist coverage that exceeds the statutorily mandated uninsured motorist limits because of its insured's receipt of Social Security.

Because health insurance and medical pay coverage is paid pursuant to the contract laws of the State of Missouri (and sometimes also because of federal or state statutory or regulatory laws), payments of benefits from a health insurance policy, a life insurance policy and public assistance payments are made pursuant to "any law under which benefits are paid . . . as compensation . . . because of that **person's** status as an employee or beneficiary." [LF, p. 24, ¶ (6); LF, p. 68, ¶ (6); Ex. A, p. A1, ¶ (6)] It is, therefore, unlikely that anyone with \$600,000 of bodily injury damages would ever be able to recover purchased uninsured motorist coverage above the statutory mandated minimum of coverage if the exclusionary language in Shelter's policies is enforced.

The unconscionability of the exclusionary language in Shelter's policies stems not only from the excessive broadness of the definition of a "compensation law," but also from the fact that the exclusionary language requires not an offset, but instead a complete forfeiture of uninsured motorist coverage above the mandatory minimum statutory limits on the basis of the insured's receipt of any benefit from a compensation

law. A single penny of any benefit payable (regardless of whether any benefit is *actually paid*) pursuant to a compensation law (whether the compensation law is medical pay coverage, workers' compensation, life insurance, etc.) results in a complete forfeiture of all purchased uninsured motorist coverage higher than the mandatory minimum coverage (i.e. in the case at bar, \$525,000).

In this appeal, Shelter has not undertaken to establish the dollar amount of workers' compensation received by Rice since the exclusionary language provides for complete forfeiture of uninsured motorist benefits above the mandatory minimum coverage rather than an offset. Shelter instead contends in its sole point on appeal that Rice is limited to recovery of standard mandated minimum coverage merely because workers' compensation benefits in an unspecified amount became payable to Rice "under a workers' compensation law." [Appellant's Brief, p. 6] Although Shelter has not made the argument, Shelter could also contend that the "other insurance" clause in the second sentence of the section on "Effect of Uninsured Motorist Insurance Laws or Financial Responsibility Laws" also limits its insureds to the mandatory minimum of coverage. [LF, p. 41; LF, p. 85; Ex. B, p. A6]

Shelter acknowledges in the argument section of its Appellant's Brief that a basis for the trial court's judgment was "that the exclusionary language of Coverage E is so excessively broad to be void as against public policy" [Appellant's Brief, p. 15, first sentence of second paragraph], but Shelter presented no point relied on concerning the issue, and no authorities were presented by Shelter concerning the issue.

What then does Shelter say? More telling than a complete failure to include this issue is Shelter's attempted defense of it. Shelter does not dispute the trial court's observations concerning the "excessively broad" exclusion, but instead argues that the broadness of the exclusionary clause is immaterial because "Shelter did not rely upon respondent Rice's receipt of any benefits other than those paid by workers' compensation in its application of the policy exclusion at issue, and the true issue in this case is whether or not the exclusion based on respondent's receipt of workers' compensation benefits is enforceable." [Appellant's Brief, p. 15, ¶ 2] Shelter's argument ignores the long-standing rule that "the function of [an appellate court] is to interpret and enforce an insurance policy *as written*." *Krombach v. Mayflower Ins. Co.*, 785 S.W.2d 728, 731 (Mo. App. E.D. 1990). The trial court ruled that the Shelter exclusion, *as written*, was excessively broad and rendered the uninsured motorist coverage illusory. [LF, p. 192, emphasis added] Shelter's exclusion is analogous to a life insurance company selling a policy that facially promises to pay death benefits of \$600,000, subject to exclusionary language that death benefits are not payable if the individual whose life is insured dies because of an accident, murder, illness, or an age-related cause. When a claim is made because of death that occurred by reason of an accident, the insurance company would contend that the "true issue" is whether or not the exclusionary language precludes recovery for death caused by an accident, and the fact that coverage would also be precluded from all other causes of death is immaterial. Shelter's argument herein is essentially the same.

Moreover, application of Shelter's exclusion eliminates any consideration for the additional premiums paid by Rice for uninsured motorist coverage. When mandatory uninsured motorist coverage is statutorily required in an automobile liability insurance policy, the coverage is provided by operation of law, even though no premium was paid for the uninsured motorist coverage. *Bryan v. USAA Cas. Ins. Co.*, 673 So.2d 72, 75 (Fla. App. 1996)

Even if Shelter had charged no premium for any uninsured motorist coverage in the three subject insurance policies, Rice would, nevertheless, have been entitled to \$75,000 of uninsured motorist coverage, because \$25,000 per insured vehicle is required by § 379.203, RSMo, and § 303.030, RSMo, as mandatory minimum coverage. Therefore, if Shelter's "excessively broad" exclusion is enforced, there will have been no consideration for the purchased additional \$525,000 in uninsured motorist coverage.

Missouri has recognized in *dicta* the requirement of consideration for an exclusion to be enforceable. For example, in *Adams v. Manchester Ins. & Indem. Co.*, 385 S.W.2d 359 (Mo. App. SLD 1964), the court found consideration present to support an endorsement in a liability insurance policy excluding coverage for the insured vehicle when it was used as an emergency vehicle, but recognized that consideration was required for the exclusion to be enforceable. *Adams* did not involve uninsured motorist coverage and did not involve the issue of reasonable expectations of an insured. Also, in *Krombach v. Mayflower Ins. Co., Ltd.*, 785 S.W.2d 728 (Mo. App. E.D. 1990), the court found ambiguity and resulting insurance coverage, because there otherwise would have been illusory coverage: "This construction in favor of an ambiguity in the policy

results because to do otherwise would render the sentence meaningless and provide illusory coverage.” *Id.* at 734.

The opinion of the Supreme Court of Idaho in *Martinez v. Idaho Counties Reciprocal Management Program*, 999 P.2d 902 (Idaho 2000) found the exclusionary language in a policy of uninsured motorist coverage to be illusory and void as against the public policy of the State of Idaho, and that the underinsured motorist coverage provided by the policy, therefore, applied despite the exclusionary language in the policy. “Since the policy creates only an illusion of coverage it is necessary that coverage for this case be afforded . . . and ICRMP is estopped from denying coverage because of the illusion of coverage it has created.” *Martinez*, 999 P.2d. at 908.

Missouri has a strong public policy protecting the reasonable expectations of an insured. The principle of insurance law that the reasonable expectations of insured persons should not be defeated is described in *Tegtmeyer v. Snellen*, 791 S.W.2d 737, 740 (Mo. App. W.D. 1990), quoting from R. Keeton’s Basic Text on Insurance Law:

The principle of reasonable expectations insures that “ ‘[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations.’ R. Keeton, Basic Text on Insurance Law § 6.3(a), at 351 (1971).”

The court in *Tegtmeyer* held that stacking of three policies of underinsured motorist coverage was required because the policy language made “uninsured” and

“underinsured” coverage synonymous, resulting in application of the stacking requirement of uninsured motorist coverage implicit in § 379.203, RSMo. *Id.* at 738.

The public policy of Missouri in implementing the implicit mandates of § 379.203, RSMo, prohibits restrictions on purchased uninsured motorist coverage even where the mandatory minimum coverage is provided from another policy of uninsured motorist coverage insurance. For example, in *Steinhaeufel v. Reliance Ins. Cos.*, 495 S.W.2d 463 (Mo. App. SLD 1973), one of the insurance companies had a provision in its uninsured motorist coverage that entirely excluded responsibility of the insurance company to pay benefits if another insurance policy provided uninsured motorist benefits in the mandatory minimum amount (then \$10,000/\$20,000), and also a provision that provided an offset when workers’ compensation benefits were paid for the same damages. Both attempts by the insurance company to avoid providing uninsured motorist coverage were unsuccessful because of the public policy implicitly created by § 379.203, RSMo.

Similarly, in *Webb v. State Farm Mut. Auto. Ins. Co.*, 479 S.W.2d 148 (Mo. App. KCD 1972), an attempt to exclude or reduce uninsured motorist coverage because of the payment and receipt of medical payments insurance coverage was void and enforceable. The public policy of Missouri “forbids impairment of uninsured motorist coverage by a policy provision.” *Cordell v. Am. Family Mut. Ins. Co.*, 677 S.W.2d 415, 416 (Mo. App. E.D. 1984) [In *Cordell*, the court held that both uninsured motorist insurance policies providing the mandatory limits of coverage were applicable despite a clause declaring one of the policies was only excess coverage over other similar coverage.]

The trial court refused to enforce the Shelter exclusion at issue because it was “excessively broad” and resulted in illusory coverage that failed to meet the expectations of the consumer. Shelter’s exclusion – if applied as written – eliminates Shelter’s consideration given in exchange for the additional premiums paid by Rice. The trial court, therefore, did not err in concluding that the exclusionary language in Shelter’s insurance policies was “so excessively broad as to be void and contrary to the public policy of Missouri” and its order of summary judgment should be affirmed. [LF, p. 192, last sentence; Ex. D, p. A20, last sentence]

**III. Respondent Rice’s Response to Appellant Shelter’s Point I: The trial court did *not* err in entering summary judgment in favor of respondent, Jason L. Rice, because the exclusion at issue violated the public policy of the State of Missouri established by § 379.203, RSMo, in that the purpose of § 379.203, RSMo, is to establish a level of uninsured motorist protection for Jason L. Rice equivalent to the liability coverage Jason L. Rice would have received had the uninsured vehicle been insured by a \$600,000 liability insurance policy and in that Shelter’s construction of its exclusion rewrites § 379.203, RSMo, to require uninsured motorist coverage “in the amount of \$25,000 per person.”**

**A. The standard of review applicable to this appeal is that the trial court’s judgment should be affirmed if it was the correct judgment.**

“Review of summary judgment is equivalent to review of a court-tried or equity proceeding, and if, as a matter of law, the judgment is sustainable on any theory, the judgment of the trial court must be sustained.” *Roberts Fertilizer, Inc. v. Steinmeier*, 748 S.W.2d 883, 886 (Mo. App. W.D. 1988).

**B. Shelter’s exclusion violates Missouri’s public policy in that § 379.203, RSMo, does not permit diminution of uninsured motorist coverage because § 379.203, RSMo, provides a level of**

**protection equivalent to the liability coverage the insured would have received had the insured been involved in an accident with an insured tortfeasor and, therefore, Shelter’s exclusion is void and unenforceable.**

**1. Section 379.203.1, RSMo, mandates uninsured motorist coverage “not less than” \$25,000 per person.**

Appellant’s sole argument on appeal is that the trial court erred “because the uninsured motorist provision excluding coverage for damages sustained by an insured if benefits are payable to the insured under a workers’ compensation law is valid and enforceable . . . in that the language of the exclusion does not violate §303.030 RSMo. of the Missouri Motor Vehicle Financial Responsibility Law or §379.203 RSMo., which collectively require automobile liability insurance policies to include uninsured motorist coverage *in the amount of \$25,000 per person.*” [Appellant’s Brief, p. 6, emphasis added] Shelter’s point on appeal is fatally flawed in that Shelter is forced to rewrite the financial responsibility law in order to prevail. Subsection 1 of § 379.203, RSMo, does *not* require uninsured motorist coverage in the minimum amounts, “set forth in section 303.030.” Instead, § 379.203, RSMo, mandates that uninsured motorist coverage be provided, and that the provided coverage be not less than the limits for bodily injury or death set forth in Section 303.030:

No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in

this state unless coverage is provided therein or supplemental thereto . . . *in not less than the limits* for bodily injury or death set forth in section 303.030, RSMo, *for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury*, sickness or disease, including death, resulting therefrom.

§ 379.203.1, RSMo (emphasis added).

The meaning of the wording in the statute mandating that “[n]o automobile liability insurance . . . shall be delivered or issued . . . unless coverage is provided . . . in not less than the limits for bodily injury or death set forth in section 303.030, RSMo . . .” is discussed as follows in the Missouri Practice Series, Insurance Law & Practice § 9.21:

The statute mandates that uninsured motorist coverage shall be for “not less than the limits for bodily injury or death set forth in Section 303.030, RSMo . . . *If the limits stated in a policy are more liberal, such provisions will prevail.*”

30 Missouri Practice Series, Insurance Law and Practice § 9.21 (emphasis added).

The purpose of § 379.203, RSMo, “is to establish a level of protection equivalent to the liability coverage the insured would have received had the insured been involved in an accident with an insured tortfeasor.” *Kuda v. Am. Family Mut. Ins. Co.*, 790 S.W.2d 464, 467 (Mo. banc 1990). In *Kuda*, the Court was confronted with a medical pay coverage provision that had no applicability as written because there was a provision in the policy requiring deduction of the medical pay coverage from the amounts payable under the uninsured motorist coverage. The insurance company, American Family, argued that it had a freedom of contract right to restrict coverage so long as the

mandatory minimum limits of uninsured motorist coverage were provided. In making this argument, American Family relied upon the holding in *Webb v. State Farm Mut. Auto. Ins. Co.*, 479 S.W.2d 148 (Mo. App. 1972). The insurance company's argument was unanimously rejected by the Supreme Court of Missouri:

Section 379.203 expresses a purpose beyond that articulated in *Webb*. *That purpose is to establish a level of protection equivalent to the liability coverage the insured would have received had the insured been involved in an accident with an insured tortfeasor.*

*Kuda*, 790 S.W.2d at 467 (emphasis added). Respondent, Rice, is, therefore, entitled to the same uninsured motorist coverage as if the uninsured motorist had \$600,000 of applicable liability insurance coverage *because the uninsured tortfeasor would not be entitled to a credit or reduction as a consequence of respondent's receipt of workers' compensation*. Workers' compensation is a collateral source, and it is ordinarily improper for a jury to even be informed of the claimant's receipt of workers' compensation benefits. *Douthet v. State Farm Mut. Auto. Ins. Co.*, 546 S.W.2d 156, 159-160 (Mo. banc 1977).

In *Dawson v. Denney-Parker*, 967 S.W.2d 90 (Mo. App. E.D. 1998), the court applied the same rationale in rejecting an insurer's attempt to avoid paying \$100,000 of uninsured motorist coverage on the basis of an attempted exclusion of uninsured motorist coverage through its definition of a "hit-and-run motor vehicle." The court in *Dawson* reviewed the legislative history of § 379.203, RSMo, and concluded that the legislature's use of the phrase "legal entitlement" in the 1982 amendment refers to "an

insured's right to recover from the uninsured motorist, not the insured's right to recover the statutory minimum uninsured motorist benefits." *Id.* at 93. The insurer, Farm Bureau, relied also on the holding in *Ezell v. Columbia Ins. Co.*, 942 S.W.2d 913 (Mo. App. S.D. 1996), to support its argument that it was only liable for the \$25,000 mandatory minimum uninsured motorist coverage. This argument also was rejected by the court, and *Ezell* was distinguished by the court since *Ezell* was decided before the 1982 amendment to Mo. Rev. Stat. § 379.203.1. *Dawson*, 967 S.W.2d at 93. The court additionally observed that "because no uninsured motorist coverage was provided by the policy, the *Ezell* court held that only the minimum uninsured motorist coverage was required." *Id.* In *Dawson*, the court, therefore, required the insurance company to pay the entire \$100,000 policy limits of coverage so that the insured was provided uninsured motorist coverage equivalent to the coverage that would have been provided had the uninsured motorist had \$100,000 of applicable liability insurance coverage.

Thus, whether the limits of uninsured motorist coverage per insured vehicle are \$25,000/\$50,000 (the mandated minimum coverage) or \$600,000/\$1,300,000 (the coverage purchased in the case at bar), the language of § 379.203, RSMo, requires "coverage . . . for the protection of persons . . . who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury . . ." and the insured is, therefore, entitled under § 379.203, RSMo, to the entire amount of uninsured motorist coverage purchased. Just as the uninsured motorist is not entitled to reduce the damages owed because of his victim's receipt of workers' compensation, an uninsured motorist carrier is not entitled to reduce the damages its insured is "legally

entitled to recover . . . from owners or operators of uninsured motor vehicles because of bodily injury . . . .” § 379.203, RSMo.

The trial court correctly interpreted the uninsured motorist provisions and the application of § 379.203, RSMo. This Court should affirm the trial court’s order of summary judgment.

**2. Section 379.203, RSMo, creates a public policy of Missouri that requires insurance companies to provide the full benefit of the uninsured motorist protection purchased, even when the amount purchased is in excess of “\$25,000 per person.”**

The trial court’s order of summary judgment is consistent with the rationale described in *Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538 (Mo. banc 1976); *Douthet v. State Farm Mut. Auto. Ins. Co.*, 546 S.W.2d 156 (Mo. banc 1977); *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266 (Mo. banc 1983); and *Barker v. Palmarin*, 799 S.W.2d 117 (Mo. App. W.D. 1990). The mandate of § 379.203, RSMo, requires that the insured receive the full benefit of the dollar amount of the uninsured motorist coverage purchased when the uninsured motorist coverage purchased is for an amount greater than \$25,000.

In *Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538 (Mo. banc 1976), the issue was whether a provision in an automobile insurance policy can limit recovery of uninsured motorist coverage to the mandatory minimum amount then required by § 379.203, RSMo, or whether stacking of the coverage is required when more than one

vehicle is insured by the same insurance policy so that the full benefit of the purchased insurance is available to the insured person. The basis for finding stacking of the coverage focused on the payment of the premiums for uninsured motorist insurance coverage, and the right of an insured to receive the coverage purchased.

*Cameron Mut. Ins. Co.* held that the attempted limitation of uninsured motorist coverage to the minimum coverage was void and unenforceable, because “[a]n insured under uninsured motorist coverage is entitled . . . to the full bodily injury protection that he purchases and for which he pays premiums” and that it was “meaningless . . . to pay for additional bodily injury insurance and simultaneously have this coverage cancelled by an insurer’s exclusion.” *Id.* at 543. The Supreme Court of Missouri in *Cameron Mut. Ins. Co.* also declared that “[c]ases should not and will not turn on how well the insurer drafts a limiting clause because the law does not permit insurers to collect a premium for certain coverage, then take that coverage away by such a clause no matter how clear or unambiguous it may be.” *Cameron Mut. Ins. Co.*, 533 S.W.2d at 545 [quoting from *Great Central Ins. Co. v. Edge*, 298 So.2d 607, 610 (Ala. 1974)].

*Douthet v. State Farm Mut. Auto. Ins. Co.*, 546 S.W.2d 156 (Mo. banc 1977) held that exclusions in an uninsured motorist policy reducing the amounts payable under the uninsured motorist coverage by the amounts paid or payable under workers’ compensation were void and unenforceable because the provisions violated the public policy established by § 379.203, RSMo. The insurance company unsuccessfully argued that the purpose of § 379.203, RSMo, is to provide the same protection that would have been available to the insured person if the uninsured tortfeasor had complied only with

*the minimum requirements* of the Motor Vehicle Safety Responsibility Law, *an argument similar to the argument made by appellant in the case at bar*. This argument was rejected because it was “not in harmony” with the interpretation of the Court in *Cameron Mutual Insurance Co. v. Madden*, 533 S.W.2d 538 (Mo. banc 1976). *Douthet*, 546 S.W.2d at 157.

In *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266 (Mo. banc 1983), this Court held that an exclusion reducing uninsured motorist coverage because of the claimant’s receipt of workers’ compensation was void and unenforceable because it violated the “public policy implicit in § 379.203, and that Travelers was not entitled to offset the workers’ compensation benefits paid . . . against its liability under the uninsured motorist coverage. Because *Douthet* rules the points so clearly, there is no occasion to consider cases from other states.” *Cano*, 656 S.W.2d at 270.

Although *Cano* concerned the mandatory minimum limits of uninsured motorist coverage, the rationale in *Cano* provides guidance for interpreting uninsured motorist coverage; and, by necessary implication, the public policy of Missouri established by § 379.203, RSMo: “[c]ases should not and will not turn on how well the insurer drafts a limiting clause because *the law does not permit insurers to collect a premium for certain coverage, then take that coverage away by such a clause no matter how clear or unambiguous it may be.*” *Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538, 545 (Mo. banc 1976), quoting from *Great Central Ins. Co. v. Edge*, 298 So.2d 607, 610 (Ala. 1974) (emphasis added).

In *Williams v. Casualty Reciprocal Exch.*, 929 S.W.2d 802 (Mo. App. W.D. 1996), the court dealt with an issue similar to that presented in Shelter's single Point Relied On. The issue raised by appellant, Shelter, is whether or not an insurance company can exclude entirely its uninsured motorist coverage for amounts higher than \$25,000 per person because of the insured's receipt of workers' compensation. The similar issue in *Williams* was whether an insurance company could obtain an offset for amounts paid as workers' compensation benefits if the offset is for amounts in excess of the mandatory minimum amounts of uninsured motorist coverage required by § 379.203, RSMo. *Id.* Thus, the issue in *Williams* involved only an offset of workers' compensation benefits while this case involves a complete exclusion if workers' compensation (or other benefits) are received.

In *Williams*, there was \$500,000 in uninsured motorist coverage. The claimant's damages were \$40,000. Workers' compensation benefits of \$35,799.55 had been paid to the claimant. The insurance company drafted its insurance policy, not with an attempted complete exclusion of coverage, such as Shelter has attempted in the case at bar, but instead with an "offset" provision that attempted to reduce the insurance company's responsibility to pay uninsured motorist coverage "by all sums . . . paid or payable because of the bodily injury under any of the following or similar law . . . (a) worker's compensation law." *Williams*, 959 S.W.2d at 808. The court in *Williams* affirmed the judgment awarding the claimant the full amount of his damages, concluding that the insurance company had not preserved its contention that it was entitled to an "offset." Because the holding of the court in *Williams* was on procedural grounds

(failure of the insurance company to preserve its claim for an “offset”) the court’s discussion regarding the claim of an offset for amounts above the minimum required uninsured motorist coverage is *dicta*.

Nevertheless, the court’s analysis and rationale is instructive. In *Williams*, Judge Stith authored the opinion and first observed that, as to the statutorily required mandatory minimum uninsured motorist coverage of \$25,000, the insurance company’s claim for an offset is prohibited by the public policy of Missouri, as declared in *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266 (Mo. banc 1983) and in *Douthet v. State Farm Mut. Auto Ins.*, 546 S.W.2d 156 (Mo. banc 1977). “Based on the holdings in *Cano* and *Douthet*, public policy prohibits enforcement of the offset provision contained in Casualty’s uninsured motorist policy up to \$25,000.” *Williams*, 929 S.W.2d at 809. The court then turned to the issue of whether a valid claim for an offset can be made in Missouri as to amounts above the \$25,000 minimum limits, and noted that there is no clear appellate authority for guidance:

We also agree that *Cano* and *Douthet* do not explicitly require that the policy be held unenforceable above the \$25,000 statutory minimum, and that Missouri has held that the household exclusion provisions contained in uninsured motorist policies are enforceable for amounts in excess of \$25,000.  
*Id.* at 809.

However, the court acknowledged that at least one Missouri decision appeared to endorse the preservation of uninsured motorist coverage above the minimum amount. The court observed that *Barker v. Palmarin*, 799 S.W.2d 117 (Mo. App. W.D. 1990),

reached the conclusion that an offset for workers' compensation payments above the statutory minimum of \$25,000 is not permitted, but that the conclusion was reached "only in *dicta*." *Williams*, 929 S.W.2d at 810. As with *Williams*, *Barker's* analysis of the issue is instructive.

In *Barker v. Palmarin*, 799 S.W.2d 117 (Mo. App. W.D. 1990), an insurance company that provided workers' compensation benefits to an injured worker brought a subrogation claim against the insurance company that provided uninsured motorist coverage for the injured employee. In *Barker*, as in the case at bar, the uninsured motorist coverage was in dollar amounts in excess of the mandatory minimum coverage. The court in *Barker* framed the issue as follows: "The issue is whether the workers' compensation statutes allow the employer's compensation carrier, which has paid benefits to an employee, to subrogate its claim against an automobile liability carrier, which is obligated to pay under its uninsured motorist clause." *Id.* at 117-118.

In *Barker*, the workers' compensation carrier paid over \$57,000 in workers' compensation benefits to the injured employee. The appeal concerned only one of the two uninsured motorist policies providing \$50,000 of uninsured motorist coverage. The trial court rendered summary judgment for the uninsured motorist carrier, determining that § 287.150, RSMo, the workers' compensation subrogation statute, did not create subrogation rights against an uninsured motorist carrier because an uninsured motorist carrier is not a "third person" within the meaning of § 287.150, RSMo.

The summary judgment was affirmed "[b]ecause of a public policy enunciated by our Supreme Court in *Cano v. Travelers Insurance Company*, 656 S.W.2d 266, 269-270

(Mo. banc 1983) . . . and because this court feels the majority analysis is correct . . . .” [majority analysis of courts in other jurisdictions ruling that a compensation carrier may not subrogate against an uninsured motorist carrier]. *Barker*, 799 S.W.2d at 118. This conclusion was dispositive of the appeal, but the court in *Barker* further concluded, in *dicta*:

There is a provision in the Northland policy saying the uninsured motorist benefits do not apply to compensation benefits. The practical effect of a holding for the employer-insurer in this type of case would be to diminish the amount of uninsured coverage available to the employee. Such a ruling would allow the compensation carrier to deplete the uninsured coverage, up to the amount paid under workers’ compensation, before the injured motorist-employee could start collecting. As the trial court noted, this result would run counter to *Cano v. Travelers Ins.*, *supra*, 656 S.W.2d at 266.

Although the case at bar involves a compensation carrier asking for the benefits of uninsured proceeds, the rationale is the same. *The Safety Responsibility Law, and the policy expressed in § 379.203, RSMo 1986, is to disallow a diminution in benefits to motorists injured by uninsured drivers.* *Barker*, 799 S.W.2d at 119 (emphasis added). The court in *Barker* observed that permitting an insurance company to reduce or exclude coverage for uninsured motorist benefits (whether within or above the minimum mandatory limits of \$25,000 required by § 379.203, RSMo,) would conflict with the rationale in *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266, 269-270 (Mo. banc 1983):

The rationale of *Cano* is clear -- uninsured benefits should not be reduced to injured motorists just because worker's compensation also applied to the injuries. As the trial court noted, a favorable result to the compensation carrier would result is [sic] a diminution of benefits to the employee covered by the Northland uninsured coverage. If the amount in worker's compensation is taken by American from the Northland coverage, the net benefits to the plaintiff-claimant are reduced. Such a result would fly in the face of the philosophy of *Cano*.

*Barker*, 799 S.W.2d at 119.

Applying the same analysis, rationale and philosophy of *Cano*, *Cameron Mutual Insurance*, *Douthet*, *Williams* and *Barker*, the exclusion in Shelter's uninsured motorist coverage purporting to cap entirely the uninsured motorist benefits of Rice at \$75,000 because of his receipt of workers' compensation benefits is, by necessary implication, void and unenforceable. The public policy of Missouri, established by § 379.203, RSMo, not only requires uninsured motorist coverage in amounts of "not less than" \$25,000/\$50,000 per automobile insured (whether or not a separate premium is charged for the coverage), but also requires that the insured who purchases uninsured motorist coverage in amounts more than \$25,000/\$50,000 receives the full benefit of the coverage purchased when an amount in excess of the mandatory minimum limits of coverage is purchased. This same public policy of Missouri requiring that uninsured motorist coverage provide protection to the insured equivalent to the protection that would have been provided had the uninsured tortfeasor possessed applicable liability insurance coverage was the basis for the holdings in *Kuda v. Am. Family Mut. Ins. Co.*,

790 S.W.2d 464 (Mo. banc 1990) and in *Dawson v. Denney-Parker*, 967 S.W.2d 90 (Mo. App. E.D. 1998). This Court must affirm the trial court’s order of summary judgment.

**3. Shelter’s interpretation would eliminate stacking of uninsured motorist coverage pursuant to the mandate of § 379.203, RSMo.**

*Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538, 543 (Mo. banc 1976) held that an insured under uninsured motorist coverage “is entitled . . . to the full bodily injury protection that he purchases and for which he pays premiums.” Cases “should not and will not turn on how well the insurer drafts a limiting clause because the law does not permit insurers to collect a premium for certain coverage, then take that coverage away by such a clause no matter how clear and unambiguous it may be.” *Id.* at 545 [quoting from *Great Central Ins. Co. v. Edge*, 298 So.2d 607, 610 (Ala. 1974)].

If § 379.203, RSMo, only required uninsured motorist coverage “in the amount of \$25,000 per person” as argued by appellant, Shelter, then stacking of uninsured motorist coverage in amounts in excess of the mandatory minimum coverage would not be required. Missouri, however, requires stacking of uninsured motorist coverage when the coverage is for amounts in excess of the mandatory minimum limits of \$25,000/\$50,000. For example, in *Tegtmeyer v. Snellen*, 791 S.W.2d 737 (Mo. App. W.D. 1990) the court held that stacking of three policies of underinsured motorist coverage (providing limits of \$50,000/\$100,000 each, and total coverage of \$150,000 per person/\$300,000 per accident) was required because the policy language made

“uninsured” and “underinsured” coverage synonymous, and “coupled with the prior case law announced in *Cameron Mutual Insurance Co. v. Madden*, 533 S.W.2d 538 (Mo. banc 1976), which prohibits anti-stacking language, the end result is the coverage is deemed to be uninsured and the policies may be stacked.” *Tegtmeyer*, 791 S.W.2d at 739.

Shelter’s argument ignores and would rewrite established insurance law principles. This Court should not overturn long-standing principles of insurance law and should affirm the trial court’s order of summary judgment.

**4. Shelter’s argument is inconsistent with the requirement in § 379.203.4, RSMo, of reimbursement to an uninsured motorist coverage provider in the event of recovery from an uninsured motorist, or from a liability insurance carrier for an uninsured motorist as to payments of uninsured motorist coverage higher than the mandatory minimum amount.**

The right of appellant, Shelter, to reimbursement pursuant to § 379.203.4, RSMo, is not limited to payments made only to the extent of the mandatory minimum limits of \$25,000. The reimbursement right applies to whatever recovery occurs “to the extent” of the payment made to the claimant pursuant to the uninsured motorist coverage:

4. In the event of payment to any person *under the coverage required by this section*, and subject to the terms and conditions of such coverage, the insurer making such payment shall, *to the extent* thereof, be entitled to the proceeds of

any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made . . . .

§ 379.203.4, RSMo, emphasis added). The phrase “under the coverage required by this section” applies not merely to recovery from the uninsured motorist of the mandatory minimum coverage limits paid by an insurance company, but also to recovery from the uninsured motorist when the insurance company has paid more than the mandatory minimum limits of uninsured motorist coverage. As the Supreme Court of Missouri stated in *State ex rel. Manchester Ins. & Indem. Co. v. Moss*, 522 S.W.2d 772 (Mo. banc 1975):

Nor is there any question that an uninsured motorist carrier is entitled to be reimbursed from the proceeds of any recovery had by plaintiff against the uninsured motorist, *limited to the amount of payment it makes to the insured by reason of the uninsured motorist coverage*, Sec. 379.203, subd. 4, RSMo 1969, V.A.M.S.

*Id.* at 774 (emphasis added).

Absent a statutory creation of an interest in a personal injury claim, the public policy of Missouri prohibits assignment of an interest in a personal injury claim, and prohibits the contractual creation of a subrogation interest in a personal injury claim. *Hays v. Missouri Hwys. and Transp. Comm’n*, 62 S.W.3d 538, 540 (Mo. App. W.D. 2001). It is, therefore, logical to conclude that at least one of the multiple reasons § 379.203, RSMo, requires mandatory minimum uninsured coverage “in not less than

the limits for bodily injury or death set forth in section 303.030, RSMo,” (emphasis added) as opposed to “*in the amount*” of the limits, is that the public policy of Missouri requires that people who purchase uninsured motorist coverage in amounts greater than the dollar amount of the minimum mandatory coverage will actually receive the benefit of the coverage for which they pay premiums, since the insurance company is given a statutory right of reimbursement in the insured’s potential tort claim against the uninsured motorist regardless of the dollar amount of purchased uninsured motorist coverage.

**5. None of the authorities relied upon by appellant, Shelter, support its point and argument contending that § 379.203, RSMo, mandates only that uninsured motorist coverage be provided “in the amount of \$25,000 per person” or that a Missouri provider of uninsured motorist coverage can exclude purchased uninsured motorist coverage in amounts higher than \$25,000 because of the insured’s receipt of workers’ compensation or right to receive workers’ compensation.**

None of the four cases principally relied upon by appellant support Shelter’s argument that § 379.203, RSMo, mandates only that uninsured motorist coverage be provided “in the amount of \$25,000 per person,” or that a Missouri provider of uninsured motorist coverage can lawfully exclude uninsured motorist coverage in

amounts higher than \$25,000 because of the insured's right to receive workers' compensation. [Appellant's Brief, p. 6]

The first case relied upon by appellant is *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266 (Mo. banc 1983). [Appellant's Brief, p. 10] *Cano* held that an insurer cannot use workers' compensation benefits to offset an insured's recovery of uninsured motorist benefits. *Cano* did not hold or suggest that workers' compensation benefits can exclude purchased uninsured motorist coverage in amounts higher than \$25,000 because of the insured's right to receive workers' compensation. Although *Cano* did not directly decide the issue of whether an uninsured motorist carrier can exclude liability entirely for coverage purchased in excess of the minimum statutory requirements of § 379.203, RSMo, the rationale and guidance of the Court in *Cano* is simply not consistent with Shelter's attempt to limit purchased uninsured motorist coverage because of Rice's right to receive workers' compensation or because of Rice's receipt of unspecified workers' compensation benefits.

Shelter next cites *Williams v. Casualty Reciprocal Exch.*, 929 S.W.2d 802 (Mo. App. W.D. 1996) as support for its Point Relied On. [Appellant's Brief, p. 12] In its argument, appellant quoted from the *Williams* opinion regarding the observation by Judge Stith that *Cano* and *Douthet* "do not explicitly require that the policy be held unenforceable above the \$25,000 statutory minimum, and that Missouri has held that household exclusion provisions contained in uninsured motorist policies are enforceable for amounts in excess of \$25,000." [Appellant's Brief, p. 12] Appellant, Shelter, did not argue that *Williams* held or implied that a workers' compensation insurance

company can exclude purchased uninsured motorist coverage in amounts higher than \$25,000 because of the insured's right to receive workers' compensation. The holding in *Williams*, on a procedural ground, was in favor of the insured, permitting recovery of more than the mandatory minimum of \$25,000. The court in *Williams* noted that if the issue of whether the offset language was enforceable had been reached, a finding that the offset language was unenforceable is supported by the *dicta* in *Barker v. Palmarin*, 799 S.W.2d 117 (Mo. App. W.D. 1990), in which the court found consistent with the rationale of *Cano*, that "uninsured benefits should not be reduced to injured motorists just because worker's compensation also applied to the injuries." *Williams*, 929 S.W.2d at 810, citing *Barker*, 799 S.W.2d at 119.

The third case principally relied on by appellant is *Todd v. Missouri United School Ins. Council*, 223 S.W.3d 156 (Mo. banc 2007), a case involving an assault at a school and the non-applicability of liability insurance coverage for intentional acts. [Appellant's Brief, p. 13] As Shelter suggests, the Court in *Todd* recognized that clear and unambiguous provisions in an insurance policy are enforceable if they do not violate public policy. *Todd* does not, however, support appellant's point and argument that an insurance company can exclude purchased uninsured motorist coverage in amounts higher than \$25,000 because of the insured's receipt of or right to receive workers' compensation.

The fourth case principally relied on by appellant is *East Attucks Community Hous., Inc. v. Old Republic Sur. Co.*, 114 S.W.3d 311 (Mo. App. W.D. 2003) [Appellant's Brief, p. 14]. As observed by appellant and supported by the opinion in

*East Attucks*, public policy will not “trump” clear and unambiguous language in an insurance policy unless there is “support in necessary implication from statutory provisions.” [Appellant’s Brief, p. 14, last paragraph] Nothing in this decision supports appellant’s point and argument that an insurance company can exclude purchased uninsured motorist coverage in amounts higher than \$25,000 because of the insured’s receipt of or right to receive workers’ compensation.

**6. The authorities upon which appellant, Shelter, may rely in its Reply Brief are either not applicable to the case at bar or are inconsistent with the public policy of Missouri established by § 379.203, RSMo.**

*Am. Standard Ins. Co. of Wisconsin v. Bracht*, 103 S.W.3d 281 (Mo. App. S.D. 2003) did not involve an attempt to exclude uninsured motorist coverage entirely because of the insured’s receipt of workers’ compensation. It did not even involve workers’ compensation. Further, as noted by Judge Stith in *Williams v. Casualty Reciprocal Exch.*, 929 S.W.2d 802 (Mo. App. W.D. 1996), even where other jurisdictions have permitted an offset of uninsured motorist coverage because of the receipt of workers’ compensation benefits, the offset is permitted only to prevent a perceived “double recovery” as to amounts of uninsured motorist coverage in excess of the mandatory minimum amounts of uninsured motorist coverage. *Id.* at 809-810. However, Missouri courts have protected collateral sources, such as uninsured motorist coverage against contentions of a “double recovery,” reasoning that if a windfall is to be received, it should be the claimant rather than an insurance company. *Douthet v. State*

*Farm Mut. Auto. Ins. Co.*, 546 S.W.2d 156, 159 (Mo. banc 1977); *Steinhaeufel v. Reliance Ins. Cos.*, 495 S.W.2d 463, 468 (Mo. App. SLD 1973); *Williams v. Casualty Reciprocal Exch.*, 929 S.W.2d 802, 809 (Mo. App. W.D. 1996).

In the case at bar, appellant, Shelter, seeks not an offset, but instead a complete exclusion above the mandatory minimum limits of uninsured motorist coverage that would exist with no premium being paid for enhanced coverage. Shelter's position in this appeal is that upon the receipt of even a single penny in workers' compensation benefits, Rice is not entitled to any recovery from his uninsured motorist coverage in an amount higher than the mandatory minimum coverage. Unlike liability insurance coverage, uninsured motorist coverage is a collateral source. The insured pays the premium for uninsured motorist coverage, whereas the premium for liability insurance coverage is paid by or on behalf of the uninsured tortfeasor. Shelter is not entitled to a windfall benefit of a collateral source purchased by Rice.

There are also significant differences in the type of damages compensable pursuant to workers' compensation laws and the type of damages compensable in an uninsured motorist coverage claim, and there are differences in the extent of recovery permitted for damages under workers' compensation law, with limitations for recovery for lost income, disability, disfigurement, and death. Because of the subrogation provisions of § 287.150, RSMo, requiring reimbursement to the uninsured motorist carrier in the event of recovery from a third party tortfeasor, the appearance of a "double recovery" may be illusory. The workers' compensation subrogation statute, § 287.150, RSMo, "does not purport to make injured employees whole." *Kerperien v.*

*Lumberman's Mut. Cas. Co.*, No. ED 79296, (Mo. App. E.D. June 18, 2002) (2002 WL 1315572); aff'd as modified, 100 S.W.3d 778 (Mo. banc 2003). "Because the workers' compensation statute does not fully compensate the employee for her injuries, the *Ruediger* formula works to provide employers a windfall paid directly by the pain and suffering of injured employees." 2002 WL 1315572.

In contrast, § 379.203, RSMo, permits recovery to the extent of the damages sustained, as if the uninsured motorist had applicable liability insurance coverage, limited only by the amount of applicable uninsured motorist coverage. The purpose of uninsured motorist insurance coverage is to provide compensation for bodily injury damages caused by an uninsured motorist, substituting the uninsured motorist coverage for the non-existent liability insurance of the tortfeasor.

Shelter's claimed exclusion because of workers' compensation payments thwarts the purpose of uninsured motorist coverage *since the tortfeasor would not be entitled to reduce his or her liability because of the injured person's receipt of workers' compensation*. As the court in *Barker v. Palmarin*, 799 S.W.2d 117 (Mo. App. W.D. 1990) reasoned, "[a] workmen's compensation carrier has no more right under the subrogation statute to benefit from this type of insurance which a covered employee elects to take at his own expense than it would from the proceeds of health, accident or hospital insurance." *Id.* at 118-119. If a workers' compensation carrier is not entitled to recover reimbursement from an uninsured motorist policy, it follows that an uninsured motorist carrier should not be permitted to exclude uninsured motorist coverage purchased in amounts in excess of \$25,000/\$50,000, especially in view of the

construction Missouri courts have applied to the provisions and requirements of § 379.203, RSMo, and the public policy providing injured workers the right to recover workers' compensation, with subrogation rights granted to the employer or employer's insurer in the event of recovery from third party tortfeasors.

As held in *Kuda v. Am. Family Mut. Ins. Co.*, 790 S.W.2d 464 (Mo. banc 1990), the purpose of § 379.203, RSMo, “*is to establish a level of protection equivalent to the liability coverage the insured would have received had the insured been involved in an accident with an insured tortfeasor.*” *Id.* at 467 (emphasis added). As held by the Missouri Court of Appeals in *Dawson v. Denney-Parker*, 967 S.W.2d 90 (Mo. App. E.D. 1998), the 1982 amendment of § 379.203, RSMo, uses the phrase “legal entitlement” to refer to the right of an insured to recover from an uninsured motorist and “not the insured’s right to recover the statutory minimum uninsured motorist benefits.” *Id.* at 93. The court in *Dawson* distinguished *Ezell v. Columbia Ins. Co.* on the basis that *Ezell* involved interpretation of the 1967 enactment of § 379.203.1, RSMo, “and did not address the language added by the 1982 amendment.” *Id.*

For all of these reasons, Shelter’s uninsured motorist coverage provisions purporting to exclude coverage of damages sustained by an insured if benefits are payable to the insured under a workers’ compensation law are *not* valid and *not* enforceable under Missouri law, and the judgment of the trial court should be affirmed.

## CONCLUSION

The summary judgment entered by the trial court in favor of respondent, Jason L. Rice, should be affirmed for three reasons:

First, there is conflict between the exclusionary language relied upon by Shelter and the last sentence in the clause of Shelter's uninsured motorist coverage entitled "Effect of Uninsured Motorist Insurance Laws or Financial Responsibility Laws." The conflicting sentence declares that: "All provisions . . . which exceed the requirements of any applicable uninsured motorist law . . . are fully enforceable." The ambiguity resulting from this conflict should be construed in favor of the insured, respondent Rice.

Second, the exclusionary language of Shelter's insurance policies is so excessively and unconscionably broad as to be inconsistent with the reasonable expectations of insured persons, and, therefore, contrary to the public policy of the State of Missouri.

Third, the provisions in the uninsured motorist policies purporting to exclude coverage for damages sustained by an insured if benefits are payable to the insured under a workers' compensation law are void and unenforceable, not only because they are unconscionable, but also because they violate the public policy of the State of Missouri established by § 379.203, RSMo, which requires that purchased uninsured motorist coverage in amounts higher than the statutory mandatory minimum coverage provides protection equivalent to the protection that would have been provided had the

uninsured tortfeasor had applicable liability insurance coverage in the same dollar amount as the purchased uninsured motorist coverage.

Respectfully submitted,

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**ATTORNEYS FOR RESPONDENT,**

**JASON L. RICE**

IN THE SUPREME COURT OF MISSOURI

JASON L. RICE,	)	
	)	
Respondent,	)	
v.	)	SC 90139
	)	
SHELTER MUTUAL INS. CO.,	)	
	)	
Appellant.	)	

CERTIFICATE OF SERVICE

AND COMPLIANCE WITH RULE 84.06

I hereby certify that the foregoing Respondent’s Substitute Brief was served upon Ben T. Schmitt and Lesley Renfro Wilson, counsel for the Appellant, Shelter Mutual Ins. Co., by mailing two copies of it to them, with a CD-ROM disk containing same, c/o Schmitt Manz Swanson & Mulhern, 1000 Walnut, Suite 800, Kansas City, MO 64110, on the \_\_\_ day of July, 2009.

I further hereby certify, pursuant to Civil Rule 84.06(c), that this brief complies with the limitations contained in Civil Rule 84.06(b), that this brief contains 15,434 words, that Microsoft Word 2007 was used to prepare the brief, and that I concurrently filed an IBM-PC compatible CD-ROM in Word 2007 format, containing a complete copy of the foregoing brief and that it has been scanned for viruses and is virus free.

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## **APPENDIX**

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|----|--|-----|
| 1. | Exhibit A – Shelter Automobile Insurance Policy -<br><br>Definitions   | A1  |
| 2. | Exhibit B – Shelter Automobile Insurance Policy – Uninsured<br><br>Motorists                                     | A4  |
| 3. | Exhibit C – Stipulated Statement of Uncontroverted Facts   | A13 |
| 4. | Exhibit D – Final Judgment in Third-Party Claim of Jason L.<br><br>Rice Against Shelter Mutual Insurance Company | A17 |
| 5. | Exhibit E – Revised Statutes of Missouri § 379.203 (as<br><br>amended 1991)                                      | A22 |